Supreme Court, U. S.
FILED
APR 25 1977
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1120

STATE OF CALIFORNIA DEPARTMENT OF BENEFIT PAYMENTS
and STATE BOARD OF EQUALIZATION,
Petitioners,

vs.

JOHN M. ENGLAND, TRUSTEE IN BANKRUPTCY IN THE MATTER OF SHAKESTEERS COFFEE SHOPS,
and UNITED STATES OF AMERICA,
Respondents.

Petitioners' Memorandum in Reply to Memorandum of the United States

EVELLE J. YOUNGER
Attorney General of the
State of California

ERNEST P. GOODMAN
Assistant Attorney General

TIMOTHY G. LADDISH
Deputy Attorney General

6000 State Building
San Francisco, CA 94102
Telephone: (415) 557-0792

Attorneys for Petitioners

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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Petitioners State of California Department of Benefit Payments and State Board of Equalization filed a petition for a writ of certiorari on February 14, 1977. In a letter dated March 16, 1977, counsel for respondent England, Trustee, who was the only party to prevail in the court of appeals, waived the right to file a reply brief. On April 14, 1977, the United States, which lost below, filed a memorandum in opposition to the California petition.

The United States has recognized that the opinion of the court of appeals in this matter (now reported at 546 F.2d 821) constitutes an erroneous application of *United States v. Randall,* 401 U.S. 513 (1971). That recognition is not surprising, for the United States has taken a position con-

sistent with that of the petitioning California taxing agencies in proceedings from the bankruptcy court through the court of appeals.

What is surprising and incomprehensible is that the United States now has decided to oppose the petition filed in this Court by the California taxing agencies. The reason stated for that opposition is that the United States "cannot say that the impact of the decision of the court of appeals upon the collection of the *federal* revenue is sufficiently substantial to warrant this Court's review *at present*." U.S. Memorandum, p. 4 (emphasis added). No explanation is given as to why this solely federal consideration should be used to deny California's attempt to gain relief from a decision which the federal government recognizes as being wrong and which, if relief is not given, will become binding in all bankruptcies in California and in other states within the ninth circuit. If this consideration were a valid test, no tax case involving only state taxes would ever merit review by this Court.

The federal memorandum recognizes that "[i]f the decision below were followed by the other courts of appeals, we believe it would present *serious problems* for the Internal Revenue Service *and the state taxing authorities* in proceedings under the Bankruptcy Act . . . ." U.S. Memorandum, p. 4 (emphasis added). Again the United States disregards the serious problems which the taxing authorities of the nine states (representing approximately 15.3 percent of the national population) in the ninth circuit will experience if the current decision is allowed to stand. Without relief from that decision, those nine states will be in exactly the same position as the federal government would be if all courts of appeals were erroneously to hold in agreement with the Ninth Circuit Court of Appeals. Unlike

the federal government, those nine states (including California) do not have the choice of waiting to generate a conflict in the circuits and then bringing this issue before this Court again.

The United States wishes this Court to deny California all relief in this matter so that the federal government can await a case situation which is more to its liking. Apparently it is of no matter to the federal government that during such a period the nine states within the ninth circuit would be fully subject to a practice and a rule which is a clear misapplication of this Court's holding in *Randall*. The federal government has adopted an irresponsible stance in opposition to California's attempt to utilize the only means available to California to gain review of a clearly erroneous decision.

For the reasons given above and in our petition for writ of certiorari it is respectfully submitted that the petition should be granted.

Dated: April 21, 1977

Respectfully submitted,

EVELLE J. YOUNGER
Attorney General of the
State of California

ERNEST P. GOODMAN
Assistant Attorney General

TIMOTHY G. LADDISH
Deputy Attorney General

Attorneys for Petitioners